IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3276 of 2000

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

N D CHOKSHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3276 of 2000

MR BA VAISHNAV for Petitioner No. 1-4

MR. H.L. JANI, LD. AGP for Respondent No. 1-3

NOTICE SERVED BY DS for Respondent No. 1

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 06/08/2004

ORAL JUDGEMENT

Heard the learned advocates.

1. The petitioners are the retired employees of the private, grant-in-aid technical centers. The petitioners retired from service prior to 1st April, 1995. The petitioners received retiral benefits including the Contributory Provident Fund amount. Since their retirement, by Government Resolution dated 17th January, 1996 a pension scheme came to be introduced with respect to the teaching and non-teaching staff in Non-Government grant-in-aid technical institutions / centres. The pension scheme introduced under the said Resolution has been made effective from 1st April, 1995. As the petitioners have retired prior to 1st April, 1995, they are excluded from the benefit of the said pension scheme. Therefore, the present petition.

2. Challenge in the present petition is to the cut off date adopted by the State Government. It is submitted that, if there were no cut off date, the petitioners also would have received the benefit under the said pension scheme.

3. The petitioners have not made out a case how 1st April, 1995 the cut-off date selected by the State Government is arbitrary; or that the said date has no relevance or nexus to the object to be achieved. The only contention raised is that the petitioners are the only four employees of non-Government Technical Centres who are excluded from the benefit of the said pension scheme. Such argument can not be countenanced. The said pension scheme is applied not only to the private, grant-in-aid Technical Centres but also to such grant-in-aid Technical Institutions. Whatever be the benefit under the said pension scheme shall apply uniformly to the employees of such institutions as well as the centres. The fact situation prevailing in such centres can not be examined in isolation of the fact situation prevailing in such institutions.

4. Whenever a pension scheme is introduced some cut off date is provided relying upon the number of retired employees, the finance available and score of other factors having nexus to the object to be achieved. But which should be the cut off date is for the authorities to decide upon the available relevant materials. The High Court exercising power of judicial review under Article 226 of the Constitution of India can not sit in appeal over such decision of the State Government. The Honourable Supreme Court has, in the matter of STATE OF WEST BENGAL AND ORS. VS. RATAN BEHARI AND ORS. (1993)

4 SCC 62) recognised this power. It is observed that "it may be remembered that the power of the State to specify a date with effect from which the Regulations framed, or amended, as the case may be, shall come into force is unquestioned. A date can be specified both prospectively as well as retrospectively. The only question is whether the prescription of the date is unreasonable or discriminatory." The Honourable Court also observed that the employer has the undoubted power to revise the terminal / pensionary benefits. The power to specify the date from which the terminal / pensionary benefits shall take effect is a concomitant of the said power. So long as such date is specified in a reasonable manner, i.e., without bringing about a discrimination between similarly situated persons, no interference is called for by he Court in that behalf. The Division Bench of this Court has, in the matter of AHMEDABAD MUNICIPAL CORPORATION [Letters Patent Appeal No. 24 of 1996 decided on 14th October, 1997 (Coram: C.K. Thakkar, J, as he then was and S.D. Pandit, J) observed that "whenever a new scheme is to be introduced by the employer, he has to give cut-off date and the introduction of the cut-off date could not be questioned unless it could be shown to be manifestly unreasonable, irrational or arbitrary." Further, the petitioners having availed of the benefit of Contributory Provident Fund for past several years, they can not claim right to receive pension. In view of this settled legal position in the above matters and in the matters of COMMITTEE FOR PROTECTION OF RIGHTS OF ONGC EMPLOYEES AND OTHERS Vs. OIL & NATURAL GAS COMMISSION, DEHRADUN AND ANR. [AIR 1990 S.C. 1167]; KRISHENA KUMAR Vs. UNION OF INDIA AND ORS. [AIR 1990 S.C. 1782] ; ALL INDIA RESERVE BANK RETIRED OFFICES ASSOCIATION AND OTHERS Vs. UNION OF INDIA AND OTHERS [AIR 1992 S.C. 767] ; STATE OF WEST BENGAL Vs. MONOTOSH ROY AND ANOTHER [(1992) 2 SCC 71]; and in the matter of SOMABHAI S. PATEL Vs. STATE OF GUJARAT AND ANOTHER [Special Civil Application No. 419 of 1987 decided on 13th March, 1991 (Coram: J.M. Panchal, J] the petition is dismissed. Rule is discharged. The parties shall bear their own costs.

5. I am at pain to note that though the legal position has been settled since the judgment in the matter of Krishena Kumar (supra), the litigants do not desist from bringing the same issue time and again before the Court. It is the duty of the advocates to advise against filing of such claims. The pensioners should be spared of the anxiety of a pending litigation and the cost of such fruitless litigation.

Dt: 6-8-2004 (Ms. R.M. Doshit, J)

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